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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,012	06/12/2001	Yoshiyuki Takase	MOC03 P365	3337

7590 07/12/2005

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EXAMINER

SHAFFER, RICKY D

ART UNIT PAPER NUMBER

2872

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/879,012

Applicant(s)

TAKASE ET AL

Examiner

Ricky D. Shafer

Art Unit

2872



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 2,4-10,12 and 14-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,11 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/20/01 & 1/18/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's election of Group I (claims 1, 3, 5, 7, 9, 11, 13 and 15) without traverse in the reply filed on 18 January 2005 and species "B", the band plate-like member has a cylindrical surface, species "C", the band plate-like member being movable in the direction of the thickness of the band plate-like member, and species "E", the band plate-like member being movable in the direction of normal of a surface of the band plate-like member, in the reply filed on 29 April 2005 is acknowledged.

2. Claims 2, 4-10, 12 and 14-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 18 January 2005 and 29 April 2005.

3. Claims 3, 11 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, lines 9-10, the use of the language "thereby make said support shaft movable in a direction intersecting the support shaft" is vague, indefinite and nonsensical. Thus, the metes and bounds of the above mentioned claims are unclear.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Koide et al ('991).

Koide et al discloses a mechanism for adjustable installation of the surface of a band plate-like member supported at both ends thereof comprising a band plate-like member (15); a container (11), said container having at least one opening on a side to allow a surface of said band plate-like member to be exposed from the opening; a mechanism (13, 14A, 14B) coupled to said band plate-like member for adjustment thereof; and support shafts (12A, 12B) linkable to said mechanism for adjustable installation provided on both ends of said container. Note figures 3, 8 and 9 along with the associated description thereof.

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Ferguson et al ('467).

Ferguson et al discloses a mechanism for adjustable installation of the surface of a band plate-like member supported at both ends thereof comprising a band plate-like member (24,16); a container (78,112), said container having at least one opening on a side to allow a surface of said band plate-like member to be exposed from the opening; a mechanism [(84,94,102), (38,114,116,134)] coupled to said band plate-like member for adjustment thereof; and support shafts (80,32) linkable to said mechanism for adjustable installation provided on both ends of said container. Note figures 6-10 along with the associated description thereof.

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1, 3, 11 and 13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8 and 11 of U.S. Patent No. 6,650,453. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application (09/879,012) discloses no additional invention or discovery other than what was already claimed and patented in U.S. Patent 6,650,453 or what would have been obvious to one of ordinary skill in the art at the time the invention was made.

U.S. Patent 6,650,453 recites a mechanism comprising a band plate-like member (a strap member), a container (case), said container having at least one opening on a side to allow a surface of said band plate-like member to be exposed from the opening (claims 1 and 9, lines 7-9); a mechanism (retainer and adjuster plates) coupled to said band plate-like member for adjustment thereof; and support shafts (bearing shafts) linkable to said mechanism for adjustable installation provided on both ends of said container (claims 1 and 9, line 10), wherein said support shafts are extended in a longitudinal direction of the band plate-like member (claims 1, lines 10-11 and claim 9, lines 10-12), each of said support shaft is loosely fitted into a through hole formed on a holder plate (retainer plate) so as to allow the support shaft to be freely

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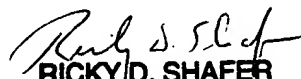
decentered within the through hole (claim 1, lines 12-21 and claim 11, lines 5-7 and 14-18), an adjustment plate (adjuster plate(s)) is linked to a portion projecting outwardly from said holder plate of said support shaft, said adjustment plate is moved relative to the holder plate to thereby make said support shaft movable in a direction intersecting the support shaft as well as said adjustment plate is rotated relative to the holder plate to thereby make said band plate-like member rotatable about the support shaft (claim 1, lines 36-41, claim 9, lines 26-31 and claim 11, lines 24-28), wherein said band plate like member is a cylindrical surface (claims 8 and 10).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ricky D. Shafer whose telephone number is (571) 272-2320. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RDS

July 10, 2005


RICKY D. SHAFER
PATENT EXAMINER
ART UNIT ~~2507~~ 2872